

# Focus on state-backed GP indemnity for Wales

Updated September 2019

**PLEASE NOTE THIS IS AN EVOLVING DOCUMENT – PLEASE CHECK BACK REGULARLY FOR UPDATES TO THE GUIDANCE AS THE NEW SYSTEM BEDS IN**

## 1. What is indemnity and why do we need it?

GPs are required to have indemnity for clinical negligence claims so that their patients can receive compensation if they are harmed by negligent care. It is a legal requirement from the GMC for all doctors to have indemnity, and GPs who want to be on the Medical Performers List are also required to have indemnity. For GPs, indemnity has traditionally been provided through membership of one of the medical defence organisations (MDOs) though a few GPs have an insurance policy.

Your subscriptions to an MDO before the state-backed indemnity scheme for general practice covered:

- Indemnity for clinical negligence claims arising from in and out of hours work;
- additional non-standard GP and private work (subject to additional payment);
- Medico-legal advice and assistance which includes advice and assistance with disciplinary, criminal and regulatory procedures, such as HB and GMC investigations and coroners and criminal investigations,

## 2. What is the difference between an occurrence-based policy versus a claims-based policy?

Occurrence-based indemnity gives you access to indemnity for claims and other matters arising from any incident that “occurs” while you were a member of an MDO, regardless of when that claim is notified. NHS indemnity is also occurrence-based indemnity.

Claims made insurance provides you with indemnity for claims arising from incidents that occur, during the policy period and are notified during that period. If you want to be able to seek indemnity for claims notified after the policy period (from incidents that happened during the policy period) you will be required to purchase “run off” cover.

The GMC says: *‘You need to have appropriate arrangements to cover you for liabilities that arise from your practice as a doctor whenever a claim is brought’.*



### 3. Are MDU, MDDUS, MPS and MDS all offering occurrence-based policies?

From 01.04.19, we understand that all organisations will be offering occurrence-based benefits of membership to members needing assistance with matters arising from care provided after that date, but not covered by the new scheme.

MDU members who have had a period of transitional membership will not be charged for extended benefit rights if they retire from the MDU at or after the normal retirement date of their NHS pension scheme.

MDDUS offered both an occurrence-based and a claims-based *values* scheme for GPs to choose from.

Therefore, if you moved onto a claims-based scheme, please note the advice on “run off” cover in the event of Welsh Government successfully concluding negotiations for an Existing Liabilities Scheme.

### 4. What is the state-backed General Medical Practitioner Indemnity (GMPI) scheme in Wales, and what does it cover?

The state-backed scheme for GPs in Wales is known as the General Medical Practitioner Indemnity (GMPI) scheme.

The GMPI scheme is currently a Future Liability Scheme (FLS) which means GPs will be able to report claims to it arising from incidents that happen on or after 01.04.19 which is when the scheme starts.

There is a commitment in Wales to provide a scheme that will provide state indemnity for GP historical liabilities that is claims arising from incidents before 01.04.19, where the claims have already been notified to their MDOs, or where a claim will be notified at a later date. This Existing Liabilities Scheme (ELS) is subject to ongoing detailed negotiation with the MDOs and thus will not commence on 01.04.19. The Welsh Government have announced intentions to introduce an Indemnities Bill which would likely allow for the creation of an Existing Liabilities Scheme.

The state-backed scheme will be run by Shared Services Partnership - Legal and Risk Services (LARS), excluding OOH cover at present which continues to be covered by Welsh Risk Pool (unless you work for Shropdoc, in which case see below).

### 5. Why was it introduced?

The cost of compensation awards in clinical negligence claims has been spiralling out of control for some time. This has nothing to do with care and treatment provided by GPs, where standards remain high, but it is a result of the legal and economic environment. For example, when paying compensation on behalf of GP members MDOs are still required by law to fund awards that are calculated on the basis care will be provided in the private sector and not the NHS.

This position was worsened when the discount rate, which is used to calculate compensation awards, was reduced from 20 March 2017. This had the effect of doubling and even trebling some high value claims and has resulted in pay-outs that could amount to £27million, and even £37 million (these two awards were agreed by NHS Resolution in October 2018).

The only way to reduce the cost of claims is for the Government to reform the law. While it has taken some steps with the Civil Liability Act 2018 to address the discount rate to an extent, the costs of indemnity would continue to escalate year on year, making it increasingly unaffordable for GPs. After lobbying from the BMA, with support from RCGP, the Governments in England and Wales decided to implement a state-backed scheme to take the burden of paying for indemnity away from GPs.

#### 6. Does the General Practice Medical Indemnity Scheme (Wales) cover all claims, both in the future and historical ones?

As above, GMPI is currently a future liabilities scheme only but in time should also include an existing liabilities scheme subject to ongoing negotiations. It does not apply to Out of Hours work – see separate section. Also, the scheme pertains to claims emanating from NHS work only provided under a contract, arrangement or agreement made under or by virtue of the following sections of the NHS Wales Act 2006:

- a section 41(2) (primary medical services);
- b section 42 (1) (general medical services contracts)
- c section 50 (arrangements by Local Health Boards for the provision of primary medical services)

#### 7. In the event of negotiations on existing liabilities scheme being successfully concluded, is it correct that the cover will be for all GPs who were members at time of transition into GMPI, provided they have purchased run off cover if on a claims-based policy?

Yes. Cover will be for all GPs who were members at time of transition into GMPI, and also GPs who were members before transition but have now retired. The Welsh Government have advised that GPs will need to purchase run off cover if they had a claims-based indemnity arrangement. This would not apply to MDU members who remain with the MDU until the normal retirement date of their NHS pension scheme. It is important to speak to your provider when the existing liabilities scheme comes in as they will be able to tell you what the situation is for you personally as it will vary according to decisions made by individual companies.

#### 8. Does it cover all my indemnity needs?

No, it only covers clinical negligence claims arising from NHS Wales GMS work and vicarious liabilities. Therefore, GPs and practices will need to ensure they have “top up” indemnity for:

- Private non-NHS work (such as forms / insurance work)
- Out of hours work (please note that the **clinical** part of any claim for Out Of Hours work, excluding Shropdoc, is currently covered by Welsh Risk Pool and not GMPI. Shropdoc is covered by GMPI. Please note that a document shared by SSP suggests that all who locum for OOH services need to register on the locum list – *see separate section* – although that is under review)

- Private medical services (including private joint injections / coils / minor surgery, administration, most travel vaccines<sup>1</sup> and some forms<sup>2</sup> )

GPs are also strongly encouraged to ensure that they have access to advice and assistance with other medico-legal matter such as:

- 24-hour telephone advice for medico-legal enquiries
- advice and assistance with medico-legal problems arising from professional work such as disciplinary, regulatory and criminal investigations e.g. Health Board, GMC the police and coroners

We anticipate that the subscriptions charged by the MDOs for these types of benefits will be significantly lower than previously.

**TOP TIP - it is vitally important that you advise your MDO of the full range of roles you and, if appropriate, your wider practice team provide to ensure you have comprehensive cover in place. There is a lot of confusion out there, and the MDOs are updating guidance as things evolve.**

#### 9. What is the locum register and how do I access it?

Firstly, this has not been agreed with GPC Wales but is a policy of Welsh Government.

Whilst GPC Wales does not understand why a separate register is needed, as the Medical Performers List should suffice, the locum register is the only mechanism by which sessional doctors can access the state-backed scheme for working in Welsh GMS / APMS practices.

In order to access the scheme, it has now been clarified that you need to register your interest via email to: [NWSSP.PrimaryCareWNWRS@wales.nhs.uk](mailto:NWSSP.PrimaryCareWNWRS@wales.nhs.uk)

**You should then receive confirmation of registration** - although there may be a slight delay in this due to volume of requests received. We have been informed that provided a sessional doctor is listed as “included” on the MPL and have registered their interest then they will be indemnified from 01.04.19.

**Please note:** GMPI have confirmed your cover is only in place from the date you register. There is no automatic registration for locum doctors. If you have not had your registration confirmed, you need to *urgently* contact Legal & Risk Services at Shared Services Partnership and ensure that you have full indemnity in place. GPC Wales is chasing Legal & Risk Services to confirm that cover will be provided to those that expressed interest but not had their registration confirmed. We have also asked for clarification on how the scheme will continue

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<sup>1</sup> Please note - treatment consisting of an immunisation which is requested in connection with travel abroad, will only be covered by the GMPI scheme **if that treatment is being provided** under the terms of a primary medical services arrangement such as a GMS contract (as per NHS Wales Act 2006, s41(2), s42(1),s50). Vaccines covered by GMS include Typhoid & Paratyphoid, Cholera, Poliomyelitis, Hepatitis A and Smallpox.

<sup>2</sup> There are 9 forms which would be covered under GMPI. which are mandatory for GMS practices to complete irrespective of whether a fee is attached, described under Schedule 4 of the National Health Service (General Medical Services Contracts) (Wales) Regulations 2004

to be highlighted to primary care to ensure all that need cover are aware on how to access this.

#### 10. Is the scheme discretionary?

Yes, like the membership benefits offered by MDOs, the scheme is discretionary with respect to decisions made determining how a claim will be managed but the clinician and / or practice will be included in the process of determining that decision. There is an appeal process that can be used if needed. The scheme guidelines document states that “*each case will be assessed on its own facts*” and that refusal will rarely happen.

We would strongly recommend that all GPs and practices ensure that any training requirements for service delivery (including Enhanced Services) are as up-to-date as possible, to ensure that in the event of a claim then this could be evidenced in and prevent a possibility that a claim would not be supported for this reason.

**Please note, there is no discretion around entry to the scheme provided you are on the Welsh Medical Performers List, and if you are a sessional doctor, have registered on the locum register.**

**TOP TIP - if you have previously been declined indemnity cover please speak to GMPI to discuss.**

#### 11. Will it look after my reputation?

The leads for the state-backed scheme have confirmed that the clinician +/- practice will be included in the decision-making process as to how a claim will be handled.

#### 12. Is there a pathway to appeal decisions made?

Yes, this has been confirmed and is in the guidance document

#### 13. Are there any circumstances where I could be excluded from the scheme?

Yes, but it is anticipated they would only be used in very rare circumstances.

#### 14. What do I need to do if I am?

- **A partner or salaried doctor working solely in a GMS practice?**

You do not need to do anything as you will be automatically covered unless you inform GMPI that you wish to opt out. You do not need to be on the locum list.

- **A partner or salaried doctor doing internal practice locums?**

GPC Wales has had formal confirmation that you do not need to register on the locum register for purely internal practice locums. However, as a belt and braces approach for added reassurance and to keep your options open, you can register on the locum register.

- **A partner or salaried doctor doing locums outside of practice?**

You need to register on the locum register (process outlined above)

- **A purely sessional doctor doing a mix of in hours and OOH sessions in differing locations?**

You need to register on the locum register although your OOH cover for clinical elements of any claim will still be from Welsh Risk Pool at the moment. Shropdoc clinicians are covered under GMPI but doctors need to be registered on the locum list.

- **A sessional or salaried doctor working purely for HB managed practices?**

Currently, we have been told that the cover will be provided under Welsh Risk Pool and you do not need to be on the locum register. As a belt and braces approach for added reassurance and to keep your options open, you can register on the locum register. This advice may change at short notice so do check with your HB regularly to ensure you are fully covered.

- **A GP providing solely OOH cover (excluding Shropdoc)?**

At present, you will continue to be covered under Welsh Risk Pool for clinical elements of a complaint but that might change in the future. The recent document from SSP suggests that you also need to register on the locum list for added reassurance that you are covered.

Also, please note that whilst MDOs largely didn't charge for additional "top up" elements after the Welsh Risk Pool came in some years ago, that situation may well have changed so please do ensure your MDO that is providing "top up" cover is aware you do OOH work.

- **A GP providing OOH cover for Shropdoc?**

At present you are covered under GMPI scheme, but you need to be registered on the locum list.

- **A sessional GP working in England as well as in Wales?**

If you are working in England, then you need to be on the English Performers List to access their state-backed scheme. Your English work won't be covered under the Welsh arrangements.

For your Welsh sessional work, you need to be on the locum register.

If you are a partner in Wales but doing sessional work in England (and no Welsh sessional work) then you will be covered automatically as per first bullet point

- **A prison doctor?**

You are covered under GMPI if you are providing in a prison with an APMS contract and do not need to enrol on the locum register but best to check with your organisation / GMPI if you are covered as there are many differing arrangements for prison health care across Wales.

- **A GP appraiser?**

You are covered under the vicarious liability indemnity of HEIW / NHS Wales as you are employed by an NHS Wales body. In practice, you are unlikely to be sued as a result of this work and it is more likely that a complaint may be made to your employer or the GMC. For assistance with these matters you need to retain membership of an MDO.

- **A GP Specialty Trainee?**

You are covered under the GMPI scheme.

- **A practice manager?**

Check that any locums you are using are registered on the locum register. Make a note of their registration number. If they are not then make sure you have sight of their indemnity cover prior to letting them undertake clinical work.

Organise “top up” cover for practice and practitioners for areas not covered under the state-backed scheme (e.g. private work)

Check that all staff with specific clinical roles have specific “top up” cover in place if needed.

- **Another health care professional employed by a GMS practice?**

You should be covered, but if doing any roles like independent prescriber or extended roles, then do check whether you need additional “top up” cover

**TOP TIP - do not forget that you need “top up” cover even with indemnity from the GMPI scheme.**

#### 15. Can I opt out as an individual clinician?

Yes, you need to inform GMPI and also your practice if you work in a substantive role, or, if sessional, ensure the practices you work for know who your indemnity provider is.

**TOP TIP - Do not opt out of the scheme before you have had confirmation of cover from your new provider.**

#### 16. Can I opt out as an entire practice and will this mean the Global Sum monies return to me?

Yes, the practice can opt out but make sure you have confirmation of cover in place from your new provider before doing so see above.

However, as yet, we do not know if the Global Sum monies would be returned in the event of an entire practice opting out. We are awaiting an answer on that.

#### 17. If a GP is covered under GMPI on 01.04.19 then leaves, and a claim comes in for their time with GMPI - is it covered like an occurrence-based policy would cover or would they need to purchase run-off cover?

GMPI is an occurrence-based scheme and thus GPs are covered during membership of the scheme. Therefore, there is no need to purchase run off cover on leaving GMPI.

18. I have been told that I must complete the electronic workforce webtool, is that correct?

It is not contractual at present – that may change. GPC Wales will issue guidance on how to complete this in due course.

19. Who can I contact for more information?

Visit the Welsh Government GP indemnity website for further guidance ([www.wales.nhs.uk/sites3/page.cfm?orgid=480&pid=96345](http://www.wales.nhs.uk/sites3/page.cfm?orgid=480&pid=96345))

Visit the dedicated Shared Services Partnership GMPI site. ([www.nwssp.wales.nhs.uk/general-medical-practice-indemnity](http://www.nwssp.wales.nhs.uk/general-medical-practice-indemnity))

For GMPI questions please email [NWSSP.PrimaryCareWNWRS@wales.nhs.uk](mailto:NWSSP.PrimaryCareWNWRS@wales.nhs.uk)

For specific “top up” cover questions please contact your MDO.

For other questions / queries then please email GPC Wales on [info.gpcwales@bma.org.uk](mailto:info.gpcwales@bma.org.uk)